

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION**

CIVIL ACTION NO. 5:13-CV-00001-RLV-DCK

CHRISTINE DUKES,)	
)	
Plaintiff,)	
)	
v.)	MOTIONS TO DISMISS
)	R. Civ. Pro. 12(b)(1),
NEWTON CONOVER CITY)	(2), (4), (5), and (6)
SCHOOLS,)	
)	
Defendant.)	
)	

NOW COMES Defendant, **NEWTON-CONOVER CITY BOARD OF EDUCATION**, on behalf of **Newton Conover City Schools**, by and through counsel, pursuant to Rules 12(b) and 41(b) of the Federal Rules of Civil Procedure and renews its motions to dismiss previously contained in its original pleading as follows:

MOTIONS TO DISMISS
R. Civ. Pro. 12(b)(1), (2) & (6)

Pursuant to Rules 12(b)(1), 12(b)(2), and 12(b)(6) of the Federal Rules of Civil Procedure this matter should be dismissed in that the Plaintiff has sued the "Newton Conover City Schools", which is not a legal entity that can be sued. In accordance with N.C.G.S. § 115C-40, the body corporate that operates and maintains the public schools within the cities of Newton and Conover, North

Carolina is the "Newton-Conover City Board of Education." Therefore, the Plaintiff has not asserted jurisdiction over the appropriate defendant and has failed to state a claim for which relief may be granted.

R. Civ. Pro. 12(b)(2), (4)& (5)

Pursuant to Rules 12(b)(2), 12(b)(4) and 12(b)(5) of the Federal Rules of Civil Procedure this matter should be dismissed for the reason the Plaintiff has failed to properly serve a valid summons on the Defendant and has failed to serve a valid summons and complaint in accordance with Rule 4 of the North Carolina Rules of Civil Procedure..

Affidavits in Support

In support of the Rule 12(b)(4) and (5) motions, attached are the following affidavits of Susan Martin attached as Exhibit 1 and Dr. Barry Redmond attached as Exhibit 2.

The Defendant is filing a brief contemporaneously with its motions.

WHEREFORE, Defendant respectfully prays as follows:

1. That Plaintiff's claims be dismissed in their entirety with prejudice;
2. That Plaintiff have and recover nothing from Defendant;
3. That the costs of this action be taxed against the Plaintiff;
5. For such other and further relief as the Court may deem just and proper.

This the 25th day of January, 2013.

CAMPBELL SHATLEY, PLLC

s/ K. Dean Shatley, II

K. Dean Shatley, II

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing *Motions to Dismiss* with the Clerk of Court using the CM/ECF systems which will automatically serve the following CM/ECF participants:

Geraldine Sumter
Ferguson, Stein, Chambers & Sumter, P.A.
741 Kenilworth Avenue, Suite 300
Charlotte, NC 28204

This the 25th day of January, 2013.

s/ K. Dean Shatley, II